



8011-01p  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65654; File No. SR-OCC-2011-08)

October 28, 2011

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member's Accounts

I. Introduction

On July 28, 2011, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2011-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the Federal Register on August 3, 2011.<sup>3</sup> On September 15, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 was published in the Federal Register on September 27, 2011.<sup>4</sup> The Commission received no comment letters on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 64982 (July 28, 2011), 76 FR 46867 (August 3, 2011).

<sup>4</sup> Securities Exchange Act Release No. 65370 (September 21, 2011), 76 FR 59750 (September 27, 2011). The proposed rule change as originally filed revises OCC Rule 1104 (margins deposited and contributions to the Clearing Fund) to clarify that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member’s accounts. Amendment No. 1 to the proposed rule change also revises OCC Rule 1106 (open positions of a suspended clearing member) in a similar manner. Accordingly, as amended, the proposed rule change clarifies that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member’s accounts under both OCC Rule 1104 and OCC Rule 1106. Telephone conference between Stephen Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets, on September 20, 2011.

proposed rule change or Amendment No. 1. This order approves the proposed rule change as modified by Amendment No. 1.

## II. Description

OCC is revising its rules to provide specific authority for OCC to use an auction process as one of the possible means by which OCC may liquidate a defaulting clearing member's accounts.<sup>5</sup> An auction is likely to be the most efficient and orderly procedure practicable for closing out clearing member portfolios in some circumstances.

The liquidation of open long and short positions through exchange transactions is an obvious means of closing out the positions of a defaulting member. However, auctions are increasingly viewed as an efficient and cost effective alternative for liquidating some or all of a clearing member's positions and collateral, especially where the positions are very large or in unstable market conditions. As compared to liquidating positions through exchange transactions, an auction may usually be expected to result in a shorter liquidation period and reduced execution risk. During Lehman Brothers Holdings Inc.'s liquidation, clearinghouses such as LCH.Clearnet and CME Clearing liquidated certain derivatives positions through auctions.

Chapter XI of OCC's Rules, which governs the liquidation of a clearing member's accounts in the event of an insolvency, provides that open positions of a clearing member must be closed by OCC "in the most orderly manner practicable." While OCC and its counsel believe that this language is broad enough to authorize a private auction, i.e., an auction limited to selected bidders, as a means of closing out open positions, OCC also believes that explicit authorization for a private auction procedure could reduce the likelihood of a legal challenge

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<sup>5</sup> The specific language of the proposed provision can be found at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_08\\_a\\_1.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_08_a_1.pdf)

should such a procedure be utilized.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires that, among other things, the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.<sup>6</sup> The proposed rule change is designed to ensure OCC has the tools necessary to liquidate the open positions and margin of a defaulting member in order to meet its settlement obligations to non-defaulting members promptly and in a manner that is least disruptive to the securities markets. OCC has not yet established detailed procedures for conducting an auction; however, any such auction must comply with the requirements of Section 17A, including requirements that the rules of a clearing agency are, in general, designed to protect investors and the public interest and are not designed to permit unfair discrimination among participants in the use of the clearing agency.<sup>7</sup>

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder.

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> Id.

<sup>8</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change, as modified by Amendment No. 1, (File No. SR-OCC-2011-08) be, and hereby is, approved.<sup>10</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).